

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

RAYMOND D. YOWELL,

Plaintiff,

v.

THE BUREAU OF FISCAL SERVICE,  
*et al.*,

Defendants.

Case No. 3:21-cv-00288-ART-CLB

ORDER GRANTING MOTION TO  
DISMISS (ECF NO. 41)

*Pro se* Plaintiff Raymond D. Yowell brings this action against the Bureau of Fiscal Service and the United States Comptroller General, challenging the garnishment of his Social Security benefits to pay an outstanding debt. Before the Court is Defendants' Motion to Dismiss, (ECF No. 41), which argues that Mr. Yowell has failed to state a claim under the Administrative Procedures Act and that he has otherwise failed to properly serve defendants. The Court finds that Mr. Yowell has failed to sue the proper party and has not alleged exhaustion of his administrative remedies. It therefore grants Defendants' Motion to Dismiss.

Mr. Yowell brings this action to contest the garnishment of his Social Security payments by the Federal government. (ECF No. 2 at 4). The Bureau of the Fiscal Service began garnishing Mr. Yowell's Social Security in 2008, when Mr. Yowell allegedly owed \$190,809.97. (*Id.* at 6.) In 2018, the alleged debt had grown to \$509,906.72. (*Id.*)

Mr. Yowell filed his Complaint in this Court in June of 2021. (*Id.* at 1.) The Court dismissed that Complaint because Mr. Yowell sought monetary damages, which is not permitted for suits brought under the APA. (ECF No. 37 at 3.) The Court granted Mr. Yowell leave to amend but cautioned that Mr. Yowell's

1 amended complaint must allege that he exhausted the administrative remedies  
2 available to him, and it must name proper defendants. As the Court explained,  
3 Mr. Yowell had erroneously sued a “disbursing agency,” the Bureau of Fiscal  
4 Service, when “it is the creditor agency, not the disbursing agency, that is  
5 required to ensure that the debtor receives due process under the law.” (*Id.* at 4  
6 (citing *Johnson v. U.S. Dep’t of Treasury*, 300 F. App’x 860, 862 (11th Cir.  
7 2008).).)

8 Mr. Yowell then filed an Amended Complaint. (ECF No. 38.) His Amended  
9 Complaint seeks injunctive relief, but it does not address administrative  
10 exhaustion or name different defendants. Defendants now seek to dismiss Mr.  
11 Yowell’s Amended Complaint.

12 A court may dismiss a plaintiff’s complaint for “failure to state a claim  
13 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled  
14 complaint must provide “a short and plain statement of the claim showing that  
15 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*  
16 *Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed  
17 factual allegations, it demands more than “labels and conclusions” or a  
18 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556  
19 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). “Factual allegations must  
20 be enough to rise above the speculative level.” *Twombly*, 550 U.S. at 555. Thus,  
21 to survive a motion to dismiss, a complaint must contain sufficient factual  
22 matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at  
23 678 (quoting *Twombly*, 550 U.S. at 570). Under this standard a district court  
24 must accept as true all well-pleaded factual allegations in the complaint and  
25 determine whether those factual allegations state a plausible claim for relief. *Id.*  
26 at 678-79.

27 Defendants argue that dismissal is appropriate because Mr. Yowell has  
28 sued the wrong agency, he has not exhausted his administrative remedies under

1 the APA, and he has failed to properly serve Defendants. Mr. Yowell argues that,  
2 because he is an American Indian in a “trustee and guardianship” relationship  
3 with Defendants, U.S. “American Indian Trusteeship . . . [and] Guardianship law”  
4 apply, and the above arguments are irrelevant. (ECF No. 43 at 2.) The Court  
5 agrees that Mr. Yowell has failed to allege exhaustion of his administrative  
6 remedies and that he is suing the wrong parties. It does not reach Defendants’  
7 service argument.

8 “The APA requires that plaintiffs exhaust administrative remedies before  
9 bringing suit in federal court.” *Great Basin Mine Watch v. Hankins*, 456 F.3d 955,  
10 965 (9th Cir. 2006). Proper exhaustion of administrative remedies means using  
11 all steps that the agency holds out, and doing so properly (so that the agency  
12 addresses the issues on the merits).” *Sisley v. U.S. Drug Enforcement*  
13 *Administration*, 11 F.4th 1029, 1035 (9th Cir. 2021) (internal quotation marks  
14 and citation omitted). Here, Mr. Yowell has not alleged that he challenged the  
15 garnishment of his benefits with the proper administrative body. Until he has  
16 exhausted the administrative remedies available to him, he cannot bring a suit  
17 under the APA in federal court. *See Tavares v. United States*, No. 3:CV-13-1654,  
18 2014 WL 4351532, at \*8 (M.D. Pa. Sept. 2, 2014) (“if the . . . plaintiff believes  
19 that the offset was made in error[,] his remedy is to pursue the administrative  
20 and legal process set by statute for challenging the offset[.]”).

21 Mr. Yowell contends that the above is irrelevant, because the United States  
22 owes a duty of trusteeship to Native American tribes, and that duty should  
23 protect his complaint, regardless of its other faults. There is no doubt the U.S.  
24 government owes a fiduciary duty to Native American tribes as recognized by the  
25 courts. *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942). Mr. Yowell  
26 has pointed to no cause of action under the United States’ fiduciary duty that  
27 could be maintained against the present Defendants, nor is the Court aware of  
28 any such cause of action. Absent a separate cause of action, Mr. Yowell’s claims

1 are bound by the Administrative Procedure Act, and the APA requires that a  
2 plaintiff exhaust his administrative remedies before bringing a claim in federal  
3 court.

4 Even if Mr. Yowell amends his complaint to allege administrative  
5 exhaustion, he is still suing the wrong parties. The Debt Collection Improvement  
6 Act of 1982 authorizes the Department of Treasury to collect non-tax debts by  
7 withholding funds paid out by other agencies, in a process known as  
8 “administrative offset.” *See* 31 U.S.C. § 3716(a); 31 C.F.R. § 285.5; *Johnson*, 300  
9 Fed. App’x at 862. A federal agency with a claim against a debtor may seek  
10 administrative offset, after first notifying the debtor that the debt is subject to  
11 administrative offset and providing an opportunity to dispute the debt or arrange  
12 to pay it. *See* 31 U.S.C. § 3716(a), (c)(6); *Johnson*, 300 Fed. App’x at 862. To seek  
13 administrative offset, the creditor agency must certify to the Treasury that the  
14 debt is eligible for collection by offset and that all due process protections have  
15 been met. *See* 31 C.F.R. § 285.5(d)(3)(ii), (d)(6); *Johnson*, 300 Fed. App’x at 862. If  
16 a debt is properly certified, the Treasury Department has no choice but to offset  
17 the debt. *See* 31 U.S.C. § 3716(c)(1)(A); *Johnson*, 300 Fed. App’x at 862.

18 The Defendants in this case have no statutory authority over the  
19 garnishment at the center of Mr. Yowell’s complaint. They were legally obligated  
20 to offset Mr. Yowell’s benefits payments as soon his debt was certified to them.  
21 *See* 31 U.S.C. § 3716(c)(1)(A); 31 C.F.R. § 285.5(d)(6). If Mr. Yowell wishes to  
22 challenge the garnishment of his Social Security benefits, he should look to the  
23 agency to whom he owes his alleged debt. As the Court previously made clear,  
24 “it is the creditor agency, not the disbursing agency, that is required to ensure  
25 that the debtor receives due process under the law.” (ECF No. 37 at 4 (citing  
26 *Johnson*, 300 Fed. App’x at 862)); *see* 31 U.S.C. § 3716(a).

1 It is therefore ordered that Defendants' Motion to Dismiss (ECF No. 41) is  
2 granted and Mr. Yowell's First Amended Complaint (ECF No. 38) is dismissed.  
3 The Court Clerk is ordered to close the case, in keeping with this order.

4 Dated this 4<sup>th</sup> Day of January 2024.

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7 ANNE R. TRAUM  
8 UNITED STATES DISTRICT JUDGE  
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